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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 196.

THE McNAB AND HARLAN MANUFACTURING COMPANY AND JOHN HARLAN, APPELLANTS,

vs.

EDWARD G. THOMPSON, TRUSTEE FOR CLARA E. CARR, EXECUTRIX, AND GEORGE D. SCOTT, EXECUTOR OF WILLIAM S. CARR, DECEASED, AND SARAH BARTHOLOMEW.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 18, 1882.

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 [SEAL.] The President of the United States of America to The McNab and Harlin Manufacturing Company and John Harlin, Greeting:

You are hereby commanded that you, and each of you, personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of August, A. D. 1879, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Charles F. Blake, trustee, *et als.*, and do further and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty on you, The McNab and Harlin M'f'g Co. and John Harlin, and each of you, of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the fifteenth day of July, in the year one thousand eight hundred seventy-nine, and of the Independence of the United States of America the hundred and fourth.

JOHN I. DAVENPORT, *Clerk.*

CHARLES F. BLAKE,
Compl'ts' Sol'r.

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of August, 1879, or the bill will be taken *pro confesso* against them.

J. I. D, *Clerk.*

2 [Endorsed:] Southern district of New York, *ss:* Wm. T. Smith, being duly sworn, deposes and says: That on the 15th day of July, A. D. 1879, he served the within subpœna on the within-named defendant, John Harlin, at his place of business, No. 56 John St., in the city of New York, as president of the within-named company, and also individually by showing him the within original and the same time leaving with him two copies thereof. (Signed) Wm. T. Smith. Subscribed and sworn to before me, this 16th day of June, A. D. 1879. (S'g'd) John A. Shields, U. S. comm'r. U. S. circuit court. Filed Jul. 31, 1879. John I. Davenport, clerk.

3 United States Circuit Court, Southern District of New York.

CHARLES F. BLAKE, Trustee, &c., WILLIAM S. CARR, and SARAH M. BARTHOLOMEW,
vs.
THE MCNAB AND HARLAN MANUFACTURING CO. and JOHN HARLAN.
} In Equity.

To the honorable the judges of said court:

Charles F. Blake, a resident of the city, county, and State of New York, and a citizen of said State, and William S. Carr and Sarah M. Bartholomew, both residents of said city of New York, and both citizens of said State of New York, bring this, their bill of complaint, against The McNab and Harlin Manufacturing Company, a corpo-

ration organized under and doing business under and by virtue of the laws of the State of New York, domiciled at the city of New York, in said State, and a citizen thereof, and John Harlin, president of said company, a resident of said city of New York, and a citizen of said State of New York.

4 . And thereupon complain and say that heretofore, and before the 5th day of August, A. D. 1856, one William S. Carr became and was the original, true, and first inventor of a new and useful improvement in water-closets, not known or used by others, prior to his said invention; that thereupon he made application to the Commissioner of Patents of the United States for letters patent therefor; that thereafter letters patent of the United States were issued to him in due him form of law for the said invention, which letters patent are dated the 5th day of August, 1856, and secure to him, his heirs, administrators, or assigns, for the term of fourteen years from the date thereof, the full and exclusive right to make, use, and vend to others to be used, the said invention.

And your orators further show unto your honors that thereafter, and before the 12th day of June, 1860, the said Carr, for good and lawful reasons, surrendered said letters patent to the Commissioner of Patents, and prayed that the same might be reissued on an amended specification for the same invention; that thereupon the Commissioner of Patents caused new and amended letters patent to be issued to the said Carr, which are for an invention described in said original letters patent, and which bear date the 12th day of June, 1860, and are numbered Reissue 978, as by reference to a duly

5 certified copy thereof, in court to be produced, will fully and at large appear.

And your orators further show unto your honors that thereafter, and before the expiration of said letters patent, the said Carr, being desirious of extending the same for a further term, made application by petition in due form of law to the Commissioner of Patents for an extension of said letters patent, reissued as aforesaid, for the further term of seven years from the expiration of the original term thereof; that thereupon the said Commissioner extended the said letters patent so granted and reissued as aforesaid for the further term of seven years from and after the 5th day of August, 1870, as by reference to the certificate of extension attached to said reissued letters patent, or a certified copy thereof, in court to be produced, will more fully and at large appear.

And your orators further show unto your honors that heretofore, and before the 7th day of April, A. D. 1868, the said William S. Carr became and was the original, true, and first inventor of a certain other new and useful improvement in water-closets, not known or used by others before his invention thereof; that thereafter he made application in due form of law for letters patent of the United States for said invention; that thereafter the said Commissioner of Patents caused letters patent of the United States to be issued to him, the said Carr, for his said last-named invention, which bear date the 7th day of April, 1868, and are numbered 76398, and grant and secure unto the said Carr and his legal representatives the full and

exclusive right and liberty of making, using, and vending
6 the said invention for the term of seventeen years from the said 7th day of April, 1868, as by reference to a duly certified copy thereof, in court to be produced, will fully and at large appear.

And your orators further show unto your honors that by an instrument in writing duly executed, bearing date the 27th day of March, 1872, the said William S. Carr assigned, sold, and set over unto your orator, Charles F. Blake, and unto Charles M. Keller, since deceased, and the survivor of them, in trust, the said several letters patent and the inventions thereby secured, as by reference to said deed of assignment, or a duly certified copy thereof, in court, to be produced, will more fully and at large appear.

7 And your orators aver, and charge the fact to be, that the said William S. Carr was the original, true, and first inventor and discoverer of the various improvements in water-closets, described and claimed in and by said several letters patent, and that the same had not been known or used by others before the invention thereof by him.

8 And your orators further show unto your honors that before the 12th day of October, 1858, Frekerick H. Bartholomew became and was the original, true, and first inventor of a certain new and useful improvement in water-closets, not known or used by others before the invention thereof by him; that thereupon he made application to the Commissioner of Patents for letters patent therefor; that thereafter letters patent were issued to him for the said invention, in due form of law, which bear date the 12th day of October, 1858, and are numbered 21734, and grant and secure unto the said Bartholomew, his heirs, executors, administrators, and assigns, for the term of fourteen years from the date thereof, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention, as by said letters patent, or a duly certified copy thereof, in court to be produced, will more fully and at large appear.

And your orators further show unto your honors that the said Bartholomew departed this life at the city, county, and State of New York, on or about the 15th day of October, 1869, and that by
9 his last will and testament he bequeathed unto his wife, Sarah Bartholomew, the said several letters patent above recited, and the inventions thereby secured, which said will was admitted to probate on or about the 3d day of November, 1869, as by said will, or a duly certified copy thereof, in court to be produced, will more fully and at large appear. And that said Sarah Bartholomew, having been appointed executrix of the last will and testament of the said Frederick H. Bartholomew, thereafter duly qualified as such executrix, and acted as such.

And your orators further show unto your honors that thereafter and before the expiration of said letters patent, the said Sarah Bartholomew, executrix as aforesaid, being desirous of extending the said last-named letters patent for a further term, made application by petition in due form of law to the Commissioner of Patents for

an extension of the same; that thereafter the said Commissioner extended the said letters patent for the further term of seven years, from and after the date of expiration thereof, to wit, the 12th day of October, 1872, as by reference to the certificate of extension attached to said last-named letters patent, or a certified copy thereof, in court to be produced, will fully appear.

And your orators further show unto your honors that by an instrument in writing, under her hand and seal, duly executed, and bearing date the 27th day of March, 1872, the said Sarah Bartholomew, as such owner and holder of said several letters patent, assigned, transferred, and set over unto your orator, Charles F. Blake, and unto Charles M. Keller, since deceased, and the survivor of them, in trust, the said several letters patent above recited, as by reference to said deed or assignment, or a duly certified copy thereof, in court [to] be produced, will more fully and at large appear.

10 And your orators further show unto your honors that he verily believes, and therefore charges the fact to be, that the said Frederick H. Bartholomew was the original and first inventor of the improvements described and claimed in the several before-recited letters patent granted to him, and that the same had not been known or used by others before the invention thereof by him.

And your orators further show unto your honors that on or about the first day of August, 1874, your orator, Charles F. Blake, and his then co-trustee, Charles M. Keller, since deceased, filed their certain bill of complaint in the United States circuit court in and for the eastern district of Pennsylvania against George R. Kirk, and in their said bill alleged that the said defendant had infringed their exclusive rights secured to them in and by the said several letters patent, and all of them upon which this bill is brought by his manufacture and sale of water-closets or parts thereof, and prayed for an accounting and injunction. That the said defendant appeared and answered; that complainants filed their replication to said answer; that thereafter both sides took testimony for final hearing at great length; that thereafter the said cause came on to be heard before his honor, William McKennan, judge, and was duly argued by counsel; that thereafter, and on or about the 8th day of October, 1878, the said judge filed his opinion in said cause in favor of the complainants; and thereafter, and on or about the 18th day of October, 1878, a decree was entered and filed in said cause in which it was ordered, adjudged, and decreed, among other things, that the title to the said several letters patent upon which said bill was brought was vested in your orator, Charles F. Blake,

11 as sole surviving complainant-trustee; that the said several letters patent, and each of them, were good and valid in law; that the said Carr and the said Bartholomew, respectively, were the original and first inventors of the inventions described and claimed in their said several original and reissued letters patent, respectively, and that the defendant, Kirk, had infringed the fourth claim of the said patents Number 76398, and had infringed the first claim of said patent No. 21734, and had infringed the third claim of said reissued and extended letters patent No. 978; and that your ora-

tor, Charles F. Blake, sole surviving complainant in said suit, should recover the profits, gains, damages, and advantages which the said George R. Kirk had received or made, or which had accrued to him by reason of his said infringement, and his costs; and referred the matter to a master for accounting in the usual form; and ordered a perpetual injunction against the said defendant, according to the prayer of the bill, enjoining and restraining him from infringing said several claims of the said letters patent which were then in force.

And your orators further show unto your honors that on or about the 15th day of August, 1872, your orator, Charles F. Blake, and his then co-trustee, Charles M. Keller, filed their bill of complaint in the U. S. circuit court in and for the northern district of Illinois against Ludwig Wolff, alleging that the said Wolff had infringed, by his manufacture, use, and sale of water-closets, the said letters patent upon which this suit is brought.

12 That after the decree had been entered in the said Kirk case, your orator, Charles F. Blake, moved thereon against said Ludwig Wolff; that thereafter, and on or about the 30th day of October, 1878, a decree was entered in said Wolff case, sustaining your orator's rights in all respects, as in said Kirk case set forth.

And your orators aver, and charge the fact to be, that the water-closets made and sold by the defendant herein are substantially the same in construction and mode of operation, both as to the completed closet and as to the particular devices set forth and claimed in the patents upon which this suit is brought, as the water-closets and devices thereof made and sold by the defendants, Kirk and Wolff, respectively, in said suits aforesaid held to be infringments of the patents upon which this suit is brought.

And your orators further show unto your honors that on or about the 14th day of October, 1874, the said Charles M. Keller, co-trustee with your orator Charles F. Blake, departed this life at Milburn, in the State of New Jersey, and that by the terms of the said deeds of trust the said trust devolved unto your orator, Charles F. Blake, as sole surviving trustee.

And your orators further show unto your honors that the said several inventions described in the said several letters patent, the right to which is now vested in your orator, Charles F. Blake, as sole surviving assignee, in trust, are of great value, and that he and the said Charles M. Keller, his co-trustee, during his lifetime, have made them of great benefit and advantage to the trust held by him and to the public, and will continue so to do if the infringement by the defendants herein and others be prevented.

13 Yet the said defendants, well knowing the premises, but contriving and wrongfully intending to injure your orators and to deprive them of the gains and profits which might, and otherwise would, accrue to them from the use and sale of the said several inventions, have confederated together jointly to injure your orators, and have sold, and are selling, great numbers of water-closets, each containing and embodying in their construction the said several inventions described and claimed in the several letters patent

before recited, the sole and exclusive right to the use, manufacture, and sale of which is vested in your orator, Charles F. Blake, and he fears a continuance of such infringement and violation of your orator's rights, and that they have heretofore sold large numbers of water-closets, embodying the several inventions described and claimed in said letters patent which have now expired.

And your orators aver, and charge the fact to be, that the said defendants have been notified of this said infringement, and warned to desist therefrom, but that they have not desisted, but continues the same, to the great damage of your orators in the sum of fifty thousand dollars.

And your orator, Charles F. Blake, further shows unto your honors, that he is able, willing, and anxious to supply all the demand of the public for water-closets, embodying the inventions described and claimed in said several letters patent respectively, and any and all of them.

Which said actings and doings of the said defendants are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises.

14 Wherefore your orators pray—

1. That the defendants may answer, under oath, the premises.

2. That they may be enjoined, during the pendency of this suit, from such infringement of said several letters patent now in force.

3. That they may be perpetually enjoined from such infringement.

4. That they may account to the complainants for the water-closets and parts thereof sold or used by them in infringement of said several letters patent, and any and all of them, in violation of your orators' said exclusive rights, and for all monies received from the manufacture, use, and sale thereof, and may be decreed to pay over unto your orators any and all profits made or derived from said sales in violation of your orators said rights.

5. That they may be decreed to pay the costs of this suit.

6. And that damages to the amount of fifty thousand dollars may be adjudged to your orators against the defendants for such violation of their said exclusive rights and for their infringement.

And for other and further relief, may it please your honors to grant unto your orators—

1. A writ of subpœna, in due and usual form and under the usual penalties, directed to the respondents, The McNab and Harlan Manufacturing Company and John Harlan.

15 2. A writ of injunction, restraining them from such infringements during the pendency of this suit, and also their agents, officers, attorneys, servants, confederates, and workmen.

3. A writ of injunction, restraining them and their servants, officers, agents, attorneys, confederates, and workmen from such infringement perpetually.

All duly sealed and tested in due and usual form and under usual penalties, and directed to said respondents, The McNab and Harlan Manufacturing Company and John Harlin.

4. And such other and further relief as equity may require and to your honors shall seem meet.

CHARLES F. BLAKE,
Trustee, &c.

CHARLES F. BLAKE,
Solicitor and Counsel for Complainants,
16 *Murray Street, New York City.*

16 UNITED STATES OF AMERICA, }
County of New York, State of New York, } *ss:*

Charles F. Blake, being duly sworn, says: That he is one of the complainants named in the foregoing bill subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except such matters and things as are therein mentioned on information and belief, and as to such matters he verily believes it to be true.

CHARLES F. BLAKE.

Subscribed and sworn to before me, this 15th day of July, 1879.
[SEAL.] PHILLIPS ABBOTT,
Notary Public, Kings and New York Co's, State of New York.

17 (Endorsed:) United States circuit court, southern district of New York. Charles F. Blake, trustee, *et als., vs.* The McNab and Harlin Manufacturing Company and John Harlan. Bill. U. S. circuit court. Filed Jul- 15, 1879. John I. Davenport, clerk.

18 Circuit Court of the United States, Southern District of New York. In equity.

CHARLES F. BLAKE *et al.*
vs.
THE MCNAB AND HARLIN M'F'G CO. & JOHN HARLIN.

SIR: Please take notice that I have been retained by and appear for both the defendants in the above-entitled action.

Dated New York, the 4 day of August, 1879.

SAM'L S. BOYD,
421 *Olive St., Saint Louis, Mo.*

To CHARLES F. BLAKE, Esq.,
Sol'r for Compl't.

19 (Endorsed:) United States circuit court, southern district of New York. In equity. Charles F. Blake *et al. vs.* The McNab and Harlin M'f'g Co. & John Harlin. Appearance for defendants. Sam'l S. Boyd, 421 Olive St., St. Louis, Mo. U. S. circuit court. Filed August 5, 1879. John I. Davenport, clerk.

20 United States Circuit Court in and for the Southern District of New York.

CHARLES F. BLAKE *et al.*, Compl'ts, *vs.* THE MCNAB AND HARLAN MANUFACTURING COMPANY and JOHN HARLAN, D'f'ts.	In Equity.

To the honorable the judges of the United States circuit court in and for the southern district of New York:

The joint and several answer of the McNab and Harlan Manufacturing Company and John Harlan, defendant-, to the bill of complaint of Charles F. Blake, trustee, &c., William S. Carr, and Sarah M. Bartholomew, complainants.

These defendants now, and at all times hereafter, saving
21 and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or either of them to make answer unto, they, these defendants, severally answering, say: That they admit, on information and belief, that the several patents and the extensions and reissues, as in said bill alleged, were granted in the manner and for the purpose and at the several dates as in said bill set forth; but these defendants deny any knowledge, information, or belief in respect to the assignments in said bill alleged, or whether the said Charles F. Blake is vested with the said
22 trust or any trust in relation to said patents or either of them, and therefore they deny the same and leave the complainants to make such proof thereof as they may be advised.

Further answering, these defendants aver that they have no knowledge, information, or belief as to whether the exclusive rights claimed to be vested in complainants under and by virtue of said letters patent are of great or any value, or whether the said complainants have been to any trouble or expense in attempting to make the said invention of benefit or advantage to themselves, and consequently they deny each and every allegation in said bill in relation thereto.

Further answering, these defendants deny that they or either of them have at any time hitherto or are now selling the said pretended invention, or any water-closets or parts of water-closets in any
23 part thereof substantially the same in construction and operation as the invention mentioned in said letters patent, or either of them, or constructed, in whole or in part, upon the principle or in the manner of the invention described and covered by and in said letters patent or either of them; but these defendants admit that the said McNab and Harlan M'f'g Co. and the said John Harlan, as its president, and not otherwise, have sold and are still selling water-closets constructed in accordance with certain letters patent of the United States granted one John C. Kupperle and one P. White, bear-

ing date April 17th, 1877, and numbered 189,562, as they have good and perfect right to do, as thereby they infringe upon no exclusive right that can be claimed by the said complainants under and by virtue of said letters patent or either of them.

24 And for a further answer and defence against the claim of the above-named complainants, these defendants aver on information and belief that neither the said Carr nor the said Bartholomew was the first and original inventor of the improvements set forth and claimed in said letters patent or either of them, but that, as these defendants are informed and believe, long anterior to any pretended invention thereof by the said Carr or the said Bartholomew the said several alleged improvements were well known to and practically and publicly used by many persons in different parts of the United States, and among other persons to the following-named persons at the places named:

At the Novelty Iron Works, in the city of New York, and at other places in said city, and also at the city of Brooklyn, as will ap-
25 pear by the testimony of Isaac V. Holmes, of Cleveland, Ohio, and others whose names are not now known to these defendants.

Also, the same were known to and used by Robert Kirkup, at Cincinnati, Ohio, where he now resides.

Also, the same were known to and publicly used by I. and H. Jones, in White street, New York city, as will appear from the testimony of Wm. Nicoll, residing at 156 Tompkins avenue, Brooklyn, and by Charles Harrison, residing in the city of New York.

Also, the same were known to and publicly used by N. G. Garraty, at No. 439 3d avenue, New York city, as will appear by the testimony of Patrick Madden, residing at Saint Louis, Missouri.

Also, that the same were so used at the "Planter's House," a hotel in Saint Louis, Missouri, as will appear by the testimony of
26 Timothy D. Turner, a resident of said city of Saint Louis, and others at said city.

Also, that the improvements set forth and described in the letters patent granted said Bartholomew were publicly used and sold by one William S. Carr in the city of New York long anterior to the pretended invention thereof by the said Bartholomew, as will appear by the testimony of N. Sawyer, residing at No. 378 Hoyt street, Brooklyn, New York, and by others whose names are not now known to these defendants, and the same were also fully shown and described in certain letters patent of the United States granted said Carr August 5th, 1856, and reissued June 12th, 1860, as number 978.

Also, that the improvements claimed in said reissue No. 978 were fully shown and described in certain letters patent of the United States granted F. H. Bartholomew February 4th, 1854,
27 and June 20, 1854, and in letters patent of the United States granted Thomas Hanson March 20th, 1855, No. 12549, and in the following English letters patent: No. 8971, granted George Hulme May 27th, 1841; James Hume, No. 781, dated November 19th, 1852; design No. 1633, for a piston cock, registered October 21st, 1848, by

William Kirkwood, and also in a printed pamphlet published in London, England, and entitled as follows, "Lambert's Patent High Pressure Valve-Cocks, Class XXI, Thomas Lambert & Son, Founders, &c.," and also in a certain other pamphlet published in Edinburgh, Scotland, entitled "Kirkwood's Registered Water-Closets, Baths, &c.," all of said letters patent and printed pamphlets being long anterior to the date of the pretended invention of the said Carr.

Also, that long anterior to the said invention of the said
28 Carr of the improvement described and claimed in said letters patent No. 76398, and in the fourth claim thereof, the same were in public use at Cincinnati, Ohio, and Mount Vernon, Ohio, and in other parts of this country, which said uses were known to Frank Milward, of Ludlow, in the State of Kentucky; to J. V. Holmes, who resides in Cleveland, Ohio, and to John W. Hill, who resides in Dayton, Ohio; also, the same were so publicly used by one William Smith, at San Francisco, California, as will appear by the testimony of said Smith, George Milne, and Lawrence McNally, all of San Francisco aforesaid.

These defendants, further answering, say: That they are informed and believe that the said several improvements in said several letters patent claimed were known to and publicly used prior to
29 said alleged invention thereof by said Carr and Bartholomew by other persons in the United States whose names are not now known to these defendants, and they crave leave to set forth the same in an amended answer when they shall have obtained definite information thereof.

Wherefore these defendants humbly submit and insist that under the facts and circumstances as above alleged the said complainants have no right to any further or other answer to said bill, or any part thereof, than is above given, and no right of injunction, account, or other relief prayed for in said bill, and they therefore ask to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

McNAB & HARLIN MAN'F'G CO.
JOHN HARLIN, *Pres't.*

SAM'L S. BOYD,
No. 421 Olive St., St. Louis, D'f'ts' Sol'r.

30 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

John Harlan, for himself, individually, and as president of the McNab and Harlin M'f'g Co., being duly sworn, deposes and says: That he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except such matters and things as are therein mentioned on information and belief, and as to such matters he verily believes it to be true.

(Signed) JOHN HARLIN.

Subscribed and sworn to before me, this 1st day of Sept., A. D. 1879.

(Signed) J. M. DEUEL, *U. S. Com'r.*

31 [Endorsed:] U. S. circ't c't, so. dist. N. Y. C. F. Blake *et al. vs.* McNab & Harlin M'f'g Co. *et al.* In equity. Answer. Sam'l S. Boyd, No. 421 Olive St., St. Louis, Mo., d'f'ts' sol'r. U. S. circuit court. Filed Sep. 1, 1879. John I. Davenport, clerk.

32 Circuit Court of the United States for the Southern District of New York.

CHARLES F. BLAKE, Trustee, &c., *et al.*
vs.
THE MCNAB AND HARLIN MANUF'G CO. *et al.* } In Equity.

The replication of Charles F. Blake, trustee, etc., William S. Carr, and Sarah M. Bartholomew, complainants, to the answer of The McNab and Harlin Manufacturing Company and John Harlin, defendants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

CHARLES F. BLAKE,
Solicitor for Complainant, 16 Murray St., New York City.

Dated at New York city, the 3rd day of December, 1879.

33 [Endorsed:] U. S. circuit court, southern district of New York. In equity. Chas. F. Blake, trustee, &c., *et als. vs.* The McNab and Harlan Man'f'g Co. *et al.* Replication. U. S. circuit court. Filed Dec. 3, 1879. John I. Davenport, clerk. Charles F. Blake, solicitor for complainant.

34 *Blake, Trustee, et al., vs. McNab & Harlan M'f'g Co. Complainants' Exh'b. Abbott Receipt. E. G. T., Ex'r.*

$6.00. NEW YORK, *June* 25, 1879.

Received of Mr. Abbott six dollars for one each Sullivan and Stone and Kupferle and Boisseler I X L closet.

McNAB & HARLAN M'F'G CO.

Blake, Trustee, &c., et als., vs. McNab and Harlan M'f'g Co. Complainants' Exhibit "Statement." E. G. T., Ex'r.

P. O. Box 799, McNab and Harlan M'f'g Co.,
New York, *Nov.* 1*st*, 1878.

Number of closets bought by McNab & Harlan Man'f'g Co. from Kupferle & Boisselier between Jan., '76, and Jan., 78	1,208
Number bought by same from Sullivan & Stone in 1876	123
	1,331 closets.

McNAB & HARLAN MAN'F'G CO.
J. W.

Mr. Charles F. Blake,
16 *Murray St., New York City.*

United States Circuit Court, Southern District of New York. In Equity.

Charles F. Blake, Trustee, &c., William S. Carr, and Sarah M. Bartholomew
vs.
The McNab & Harlan Manufacturing Company and John Harlan.

Proofs on the part of the complainants for final hearing, taken before Edward G. Thompson, one of the standing examiners of this court, under and pursuant to the 67th rule in equity, as amended, and pursuant to notice.

35 New York, *December* 17, 1879.

Present: Charles F. Blake, counsel for complainants.

Counsel for defendants, S. S. Boyd, Esq., consents that the complainants may take their *prima facie* case in his absence, reserving to him all right of objections and cross-examination.

Phillips Abbott, a witness produced on the part of complainants, being first duly sworn, in answer to interrogatories propounded by Mr. Blake, says as follows:

1 Q. What is your name, age, residence, and occupation?

A. Phillips Abbott; I am 29 years of age; I reside at 41 Pierrepont street, Brooklyn, New York; I am the managing clerk in the office of Charles F. Blake, Esq., 16 Murray street, New York city, counsel for complainants herein.

2 Q. Have you ever, and if yea, when, purchased any water closet or closets, or parts thereof, from the McNab & Harlan Manufacturing Company, of the city of New York? Please state fully.

A. I have. On the 25th day of June, 1879, I called at the place of business of the McNab & Harlan Manufacturing Company, 56 John street, New York city, and there saw Mr. John Harlan; I told him I had come to get, if possible, one of the Kupferle & Boisselier

water-closets sold by them, and referred to in their statement or letter to Mr. Blake, dated the 1st day of November, 1878.

After some conversation we found one of the said Kupferle & Boisselier closets; the pan lever, pull, and bridge of the closet we could not find, but we did find the supply cock attached to it.

I bought this closet from Mr. Harlan and paid him therefor, and took it away with me that day; I took a receipt for it, together with another closet which I bought at that time also.

36 Mr. Harlan said that this closet was identical, so far as it was complete, with the closets they referred to in the said statement or letter as the "Kupferle & Boisselier."

3 Q. Where has this closet been since you purchased it?

A. In my possession; also the receipt.

4 Q. Will you produce them?

A. I will, and I now do so.

Counsel for complainants offers in evidence the said Kupferle & Boisselier water-closet, and the same is marked Complainants' Exhibit Kupferle & Boisselier. E. G. T., Ex'r.

Also the cock attached to said Kupferle & Boisselier water-closet, and the same is marked Complainants' Exhibit Kupferle & Boisselier Supply Cock. E. G. T., Ex'r.

Also the said receipt, and the same is marked Complainants' Exhibit Abbott Receipt. E. G. T., Ex'r.

Also the said statement or letter from the McNab & Harlan Manufacturing Company to Charles F. Blake, dated November 1st, 1878, and the same is marked Complainants' Exhibit Statement. E. G. T., Ex'r.

PHILLIPS ABBOTT.

Subscribed and sworn to before me, this 27th day of December, 1879

E. G. THOMPSON, *Examiner.*

Right of objection and cross-examination reserved to counsel for defendants.

Adjourned to December 20, 11 a. m.

37 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the thirtieth day of November, in the year of our Lord one thousand eight hundred and eighty.

Present: The Honorable Samuel Blatchford, circuit judge.

CHARLES F. BLAKE, Trustee, etc.,

vs.

MCNAB AND HARLAN MANUFACTURING CO.

THE SAME

vs.

JOHN EATON *et als.*

The above causes coming on for final hearing upon the pleadings and the same proofs—

Mr. Charles F. Blake is heard in behalf of the complainants.
Mr. Samuel S. Boyd is heard in behalf of the defendants.

C. A. V.

38 Circuit Court of the United States for the Southern District of New York.

CHARLES F. BLAKE and others
vs.
THE MCNAB AND HARLAN MANUFACTURING COMPANY and JOHN HARLAN.

THE SAME
vs.
JOHN EATON and others.

BLATCHFORD, J.: This suit as presented involves two patents—one is a reissue, No. 978, granted to William S. Carr, as inventor, June 12th, 1860, for "improvements in water-closets," the original patent having been granted to him August 5th, 1856, and the reissue having been extended for 7 years from August 5th, 1870. Infringement of the third claim only of the reissue is alleged. The specification of the reissue says: The nature of my said invention consists in a peculiar construction of cock, which is opened by the
39 motion of the seat of the water-closet, and allows but little water to run into the pan of the closet until the weight is removed from the seat, when the cock, gradually closing of itself, allows the water to run for a limited and regulated time sufficient to wash out the basin." The third claim of the reissue is as follows: "In a valve for water-closets, a cup-leather, for controlling the motion of said valve in closing gradually, substantially as specified, said cup-leather moving freely in one direction and closing against the containing cylinder in the other direction, and the leakage of water in said cylinder allowing the movement of said cylinder, as set forth." The invention embodied in this claim is, in fact, a combination of a valve for a water-closet with a variable chamber and with a cup-leather, in such manner that the valve is caused
40 to close slowly, because the operation of the cup-leather as a tight packing prevents the passage of water, and is allowed to open rapidly, because the operation of the cup-leather as a valve permits the passage of water. The cup-leather thus acts in one direction as a valve and in the opposite direction as a packing. The variable chamber, or cavity, or cylinder, has in it a piston, with a cup-leather on it centrally, and is provided with a small aperture, which permits the gradual escape of water from it. When the cavity is filled with water the valve is held on its seat by a spiral spring. When the valve-stem is depressed, the valve is opened rapidly, because the cup-leather then acts as a valve and permits the water to pass freely outside of it. When the force which depressed the valve-stem is removed, the spring acts to shut the valve, but shuts it slowly, because the cup-leather acts as a tight packing, being forced by the pressure of the water outwards against the wall of the cavity;

therefore the water can escape only slowly from the cav-
41 ity through the said small aperture, and the valve cannot move faster to shut than it is allowed to move by the escape of the water through said small aperture. The defendants' water-closet has a contrivance, the mode of operation of which is substantially the same as that of Carr's. It has a variable chamber, a cup-leather, which acts in one direction as a packing and in the opposite direction as a valve, and it has a small aperture in the variable chamber, which permits a small flow of water therefrom while the valve is closing. The cup-leather controls the motion of the valve in closing gradually; it moves freely in one direction and closes against the wall of the containing chamber in the other direction, and the leakage of water in said chamber allows the movement of the cup-leather.

There is clearly an infringement of the third claim, unless
42 the particular arrangement of the aperture through which the water escapes from the variable chamber is an element of that claim. In the specification of Carr's reissue it is said that leakage at the washer, through which the stem of the supply cock passes, will in some cases be adequate to make the closing of the valve sufficiently gradual, but that he proposes to use a screw entered through the cap of the chamber with a head next said washer, and part of one side of the screw filed away so as to adjust the amount of leakage. In the defendants' apparatus there is a small hole in the side of the chamber near the end thereof, where the plunger enters, connecting by a small enclosed channel with the portion of the chamber beyond the cup leather. The plunger and stem in the defendant's apparatus are no more than the stem in Carr's. The differences in the escape channels are formal and not substantial.

43 The defendants contend that the cup-leather of Carr does not control the motion of the valve in closing gradually, and that it simply acts as a packing, during the closing of the valve, to entirely prevent any closing, by preventing the water from passing from above. But the language of the claim, in connection with the descriptive part of the specification is, that the action of the cup-leather as a packing and its gradual movement permitted by the slow escape of the water from above it control the movement of the valve in closing gradually.

On the question of novelty or as affecting the construction of the said third claim the defendants adduce English letters patent No. 8971, granted to George Hulme, for "improvements in water-closets," the specification of which bears date November 27th, 1841. But no witness for the defendants testifies to the existence in Hulme
44 of what is found in the third claim of Carr. There is no cup-leather in Hulme. Hulme's device is one for keeping a valve open for any required length of time for the supply of water to the basin of the water-closet. He has a bucket with a central poppet valve. In place of that the defendants use a cup-leather.

The defendants take the position that a central valve alone was old; that a cup-leather alone was old; that a poppet valve in combination with a cup-leather was old; that Hulme had a bucket or

plunger with a central poppet valve and a means of regulating the escape of the water from above the plunger; that such means of escape in the defendant's apparatus is the same as in Hulme; and that, in view of these considerations, the third claim of the Carr reissue must be limited to the special mode of escape shown by Carr.

But, although the defendants use Hulme's mode of escape,
45 they do not use his plunger with the poppet valve, but use instead a cup-leather, and thus use Carr's combination. It is very clear that the cup-leather does not have the same mode of operation as the poppet valve, and that the points of advantage in it must be just the reasons why the defendants use it and do not use the poppet valve arrangement of Hulme in connection with Hulme's mode of escape. Nor does it avail to show the prior existence in Kirkwood of a mode of regulating the supply of water by an arrangement for the gradual escape of the water from above the plunger, so long as the arrangement set forth in the third claim of the reissue is not found in Kirkwood.

The other patent sued on is No. 21734, granted to Frederick H. Bartholomew, October 12th, 1858, for an "improved water closet," and extended for seven years from October 12th, 1872. The
46 first claim of that patent is alleged to have been infringed. It is as follows: "The use of a drip-box or leak-chamber arranged above the closet and below and around the supply cock substantially as described" The specification says that "the nature of the invention consists in providing for water-closets a cistern or drip, or leak-chamber, arranged upon the top of or over the tank of a closet, and placing a supply-cock within or above said drip-box or cistern, so that any waste, or drip, or leak from the cock shall be conducted into the tank, so as to insure the keeping of the floor dry." The drip-box is described and shown as arranged upon the top plate of the closet by being cast upon the top plate, and as having the supply cock within it, and it is set forth that any leakage about the cock will drop into the closet. The leakage from the joints of the supply cock must fall into the drip-box and thence
47 into the trunk and the soil pipe, and not fall on the floor. The defendants' apparatus has a trunk and a supply cock and drip-box, arranged below and around the supply cock, but the drip-box is cast upon the side of the trunk near its top and not upon its top. The drip goes into the drip-box and thence into the trunk and the soil pipe. The question is whether the change of the position of the drip-box is formal or substantial. It is contended for the defendants that it was not new to have a drip-box or to have a pipe for conveying away drippings in machinery from a drip-box arranged in connection with a cock or a valve, or to have a drip-cup applied to the valve of a water-closet, the leakage from the valve falling into a saucer and thence finding its way, through a hole, into the inside of the trunk; that a valve on the floor at the foot of the trunk was old, and so was a
48 valve attached to the trunk and below its top, and a valve above the top; that it was old to have in connection with a valve a drip-pan conducting the drip into the soil pipe at the foot of

the trunk, and also to have a valve on top of the trunk and a provision, by means of a hollow arm, for conducting the drip into the trunk; and that, in view of all this, the first claim of the Bartholomew patent cannot be held to cover the defendants' drip-cup arrangement. But the evidence of the plaintiffs' expert as to two water-closet drip arrangements, respecting which the defendants' introduced testimony, namely, that of Kirkup, and the Scotch closet of Nicoll and Harrison, shows that they were not like either Carr's or the defendants'. In the Turner and Madden arrangements the douces were on the floor and the drip ran into the soil pipe below the trunk. No arrangement is shown before Bartholomew in the same place as his with reference to the other parts of the
49 closet and to the work it has to do, and to the supply cock and to the drip it catches, and doing the same work and catching the same drip as his does and as the defendants' does. There is nothing in the State of the art which requires such a construction to be given to the words "above the closet" as will not make the defendants' drip-box substantially above the closet, although not cast on the cover, but on the side near the top. There is the same operation of the same parts, acting in combination with each other and attaining the same result. This is the testimony of the plaintiffs' expert, and it is not contradicted. It must, therefore, be held that the defendants have infringed the first claim of No. 21734.

In a suit before Judge McKennan the validity of the two claims above considered was sustained, but, in deciding the case, no written opinion was given. In a suit in Missouri against Boisselier
50 and Kupferle, involving the said claims and a closet like that of the defendants in these cases, the bill was dismissed, but on what grounds does not appear from the decision of the court. In regard to any supposed effect of the decree in that suit as a bar in favor of the defendants in these suits it is sufficient to say that no proceedings in that suit are set up in the answers in these suits.

There must be decrees for the plaintiffs as to the above claims, and for an account of profits and an ascertainment of damages, with costs.

C. F. BLAKE,
For the Plaintiffs.
S. S. BOYD,
For the Defendants.

[Endorsed:] Circuit court of the United States for the southern district of New York. Charles F. Blake and others *vs.* The McNab and Harlan M'f'g Co. and another. Decision Feb. 15, 1881. U. S. circuit court. Filed Feb. 15, 1881. Joseph M. Deuel, clerk.

51 United States Circuit Court, Southern District of New York.
In Equity.

CHARLES F. BLAKE, Trustee, &c., WILLIAM S. CARR, and SARAH BARTHOLOMEW
against
THE MCNAB AND HARLAN MANUFACTURING COMPANY and JOHN HARLAN.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

Edward G. Thompson, being duly sworn, says: I am of full age, reside in the city of New York, and am a member of the firm of Wetmore, Jenner & Thompson, solicitor and counsel for the complainant herein. On or about the 20th day of September, 1880, William S. Carr, one of the complainants herein, departed this life,
at the city of New York, leaving a last will and testament,
52 and by his last will and testament he appointed his wife, Clara E. Carr, and George D. Scott his executrix and executor respectively.

Thereafter the said last will and testament was duly admitted to probate, and the said Clara E. Carr and George D. Scott duly qualified as executrix and executor thereunder respectively.

That on or about the 21st day of February, 1881, Charles F. Blake, the then trustee for his co-complainants, William S. Carr and Sarah Bartholomew, and one of the complainants herein, as such trustee, departed this life at the city of New York, and that by his death the trust held by him lapsed.

That thereafter, and on or about the 14th day of March, 1881, deponent, by a duly drawn, executed, and delivered instrument in writing, and under seal, was appointed by said Clara E. Carr and George D. Scott, executrix and executor as aforesaid, and by said
Sarah Bartholomew, trustee for them in the place and stead
53 of said Charles F. Blake deceased, and that thereupon deponent accepted said trust and acted under the same; and that thereupon the title to the letters patent here in suit was assigned to deponent in trust.

Wherefore deponent prays that the order hereto attached may be made herein, reviving this suit and making deponent as trustee and Clara E. Carr executrix and George D. Scott executor, respectively, of said William S. Carr and Sarah M. Bartholomew, parties complainant, in the place and stead of the present complainants, and that all the proceedings herein stand.

E. G. THOMPSON.

Sworn to before me, this 12 day of October, 1881.
[SEAL.] PHILLIPS ABBOTT,
Notary Public, Kings Co. & New York Co., State of New York.

54 At a stated term of the circuit court of the United States in and for the southern district of New York, held at the city of New York, on this 21st day of October, 1881.

Present: The Honorable Samuel C. Blatchford, circuit judge.

CHARLES F. BLAKE, Trustee, &c., WILLIAM S. CARR, and SARAH BARTHOLOMEW

vs.

THE MCNAB AND HARLAN MANUFACTURING COMPANY and JOHN HARLAN.

On reading and filing the hereto-annexed affidavit of Edward G. Thompson, and the annexed consent of the solicitors for the plaintiffs and defendants, and on due consideration thereof, it is hereby ordered: That this case stand revived, with Edward G. Thompson, trustee of Clara E. Carr and George D. Scott, executrix and executor of the last will and testament of William S. Carr, and Clara
55 E. Carr and George D. Scott, as such executrix and executor respectively, and Sarah Bartholomew, parties complainant in the place and stead of Charles F. Blake, trustee, &c., William S. Carr, and Sarah Bartholomew, the present complainants, and that all the proceedings herein stand.

SAM'L BLATCHFORD.

(Endorsed:) United States circuit court, southern district of New York. Charles F. Blake, trustee, &c., William S. Carr, and Sarah Bartholomew *vs.* The McNab and Harlan Manufacturing Company and John Harlan. Affidavit and order. U. S. circuit court. Filed Oct. 24, 1881. Joseph M. Deuel, clerk. Approved as to form and substance. May be filed and entered. Sam'l S. Boyd, def'ts' sol'r. Wetmore, Jenner & Thompson, compl'ts' sol'rs.

56 At a stated term of the circuit court of the United States in and for the southern district of New York, held at the city of New York, on the 26th day of October, 1881.

Present: The Honorable Samuel Blatchford, circuit judge.

EDWARD G. THOMPSON, Trustee, &c., *et als.*,

vs.

THE MCNAB AND HARLAN MANUFACTURING COMPANY AND JOHN HARLAN.

This cause came on to be heard at this term of said court, and was argued by counsel for the respective parties, and thereupon, and upon consideration thereof, it is found, and hereby ordered, adjudged, and decreed that the reissued letters patent granted to William S. Carr, dated the 12th day
57 of June, 1860, No. 978, for an "improvement in water closets," and extended on the 5th day of August, 1870, and the letters patent granted to Frederick H. Bartholomew, dated the 12th day of October, 1858, numbered 21734, for an "improved water-closet," and extended on the 12th day of October, 1872, on which this suit is

brought, are respectively good and valid in law. That the said Carr and the said Bartholomew are respectively the original and first inventors of the respective inventions described and claimed in said reissued and original letters patent respectively. That the title thereto respectively and to the invention described and claimed therein respectively is vested in the complainant, Edward G. Thompson, as trustee for Sarah Bartholomew, and for Clara E. Carr and George D. Scott, executrix and executor under the last will
58 and testament of William S. Carr, deceased, the said Edward G. Thompson, being the successor of the former complainant, Charles F. Blake, deceased, trustee for the said Sarah Bartholomew and for William S. Carr, deceased, and that the defendants have infringed the 3d claim of said reissued letters patent 978 and the 1st claim of said original letters patent No. 21734, and the exclusive rights of the complainants under the same.

And it is further ordered, adjudged, and decreed that the complainant, Edward G. Thompson, as such trustee, do recover from the defendants the profits, gains, and advantages which the said defendants have received or made, or which have arisen or accrued to them by reason of any infringement by said defendants of the said original letters patent No. 21734 since the 12th day of October, 1858, and said reissued letters patent No. 978 since the 12th
59 day of June, 1860, and also the damages which the complainants have sustained by reason of said infringement, to be assessed as provided by statute.

And it is further ordered, adjudged, and decreed that the said complainant, Edward G. Thompson, as such trustee, do recover of the defendants the complainants' costs and charges and disbursements in this suit, to be taxed.

And it is further ordered, adjudged, and decreed that it be referred to Francis Howland, of number 11 Pine street, in the city of New York, as master *pro hac vice* of this court, to ascertain and take and state and report to the court an account of the gains, profits, and advantages which the said defendants have received, or which have arisen or accrued to them by reason of any infringement by them of the 1st claim of said original letters patent No.
60 21734 since the 12th day of October, 1858, and of the 3rd claim of the said reissued letters patent 978 since the 12th day of June, 1860, and also to assess the damages suffered by the complainants herein by reason of any infringement by said defendants since the 27th day of March, 1872.

And it is further ordered, adjudged, and decreed that the complainants, on such accounting, have the right to cause an examination of the said defendants *ore tenus*, or otherwise, and also the production of the books, vouchers, and documents of said defendants, and that the said defendants attend for such purpose before said master, from time to time, as said master shall direct.

(Signed) SAM'L BLATCHFORD.

I hereby approve the form and contents of the above decree, and it may be filed and entered.

SAM'L S. BOYD,

61 *Solicitor for Def'ts.*

WETMORE, JENNER & THOMPSON,

Sol'rs for Compl't.

[Endorsed:] U. S. circuit court, southern district of N. Y. Edward G. Thompson, trustee, &c., *et als. vs.* The McNab and Harlan Manufacturing Company and John Harlan. Interlocutory decree. Sir: Please take notice that we shall present the within decree to this court on the 28th day of October, 1881, at 11 o'clock a. m., for settlement. Wetmore, Jenner & Thompson, solicitors for

62 compl't. To S. S. Boyd, Esq., solicitor for def'ts. U. S. circuit court. Filed Oct. 29, 1881. Joseph M. Deuel, clerk.

63 At a stated term of the circuit court of the United States, in and for the second circuit, southern district of New York, on the 21st day of January, 1882.

Present: The Honorable Samuel Blatchford, circuit judge.

EDWARD G. THOMPSON, Trustee, &c., CLARA E. CARR, and GEORGE D. SCOTT, and SARAH BARTHOLOMEW

vs.

THE MCNAB AND HARLAN MANUFACTURING COMPANY and JOHN HARLAN.

This cause heretofore, and at the October term, 1880, came on to be heard by this court, and was argued by counsel, and thereafter, and on or about the 29th day of October, 1881, an interlocu-

64 tory decree was filed herein in favor of complainants, among other things awarding them an account for profits and damages and their costs, to be taxed.

Thereafter the parties agreed that the damages suffered by the complainants by reason of the infringement of the defendants was twelve hundred dollars; and that the taxable costs payable by defendants to complainants was one hundred and eighteen $\frac{74}{100}$ dollars.

Now, therefore, on consideration thereof, it is hereby ordered, adjudged, and decreed that the defendants pay to the complainants the sum of twelve hundred dollars damages, and one hundred and eighteen $\frac{74}{100}$ dollars costs, making in all the sum of thirteen hundred and eighteen $\frac{74}{100}$ dollars; and that the complainants have execution for the said sum of thirteen hundred and eighteen $\frac{74}{100}$ dollars ($1,318\frac{74}{100}$).

65 Approved as to form and substance, and may be filed and entered.

WETMORE, JENNER & THOMPSON,

Sol'rs for Complainants.

SAM'L S. BOYD,

Sol'rs for Defendants.

(Endorsed:) U. S. C. C., S. D. N. Y. In equity. E. G. Thomp-

son, trustee, &c., *et al. vs.* The McNab & Harlan Manufacturing Company *et al.* Decree. Wetmore, Jenner & Thompson, 206 Broadway, New York city. U. S. circuit court. Filed Jan. 21, 1882. Joseph M. Deuel, clerk.

66 United States Circuit Court, Southern District of New York.

E. G. THOMPSON, Trustee, *et al.*, Appellees,
vs.
THE MCNAB AND HARLAN M'F'G CO. *et al.*, Appellants. } Equity.

To the Honorable the Supreme Court of the United States:

The appeal of defendants (appellants) respectfully showeth that upon the 7 day of July, 1879, the bill of complaint herein was filed alleging that the defendants had infringed letters patent of the United States granted William S. Carr, dated the 12th day of June, 1860, being reissue numbered 978; also upon letters patent of the United States granted J. H. Bartholomew October 12th, 1858, and numbered 21734; and said bill of complaint prayed for an
67 account, profits, and damages, and for writs of subpœna and injunction that said defendants appeared by counsel, Samuel S. Boyd, Esq., on or about the 1st day of August, 1879, and on or about the first day of September, 1879, defendants filed their answer, and on or about the 1st day of October replication thereto was filed.

That thereafter and on or about the 30th day of November, 1880, this cause was argued before his honor, Judge Blatchford, on a record for complainants and defendants, and on or about the 15th day of February, 1881, a decree was entered herein sustaining the validity of said patents to Carr and Bartholomew, and ordering an account and damages. That thereupon, by agreement of parties, the damages were assessed at $415, and costs at 101\frac{24}{100}$, and a final decree entered for the whole sum of 516\frac{24}{100}$.

68 Wherefore appellant's appeal from the whole of said decree of said circuit court, except the amount of damages and costs, and respectfully pray that the decree of said circuit court, and the pleadings, record, evidence, proceedings, stipulations, and exhibits in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of said circuit court, and every part thereof, may be reversed, and a decree made reversing said decree of said circuit court with costs, and such other decree as to the Supreme Court shall seem just.

SAM'L S. BOYD,
Sol'r & Counsel for Def'ts, Appellants.

Saint Louis, January 16, 1882.

Appeal allowed January 21st, 1882.

SAM'L BLATCHFORD,
Circuit Judge.

69 [Endorsed:] U. S. circ't c't, so. dist. N. Y. E. G. Thompson, trustee, *et al. vs.* The McNab and Harlan M'f'g Co.

et al. Equity. Petition for appeal. Service of copy. Petition of appeal admitted Jan'y 24, 1882. Wetmore, Jenner & Thompson, for appellees. Sam'l S. Boyd, St. Louis, d'f'ts' counsel. U. S. circuit court. Filed Jan. 21, 1882. Joseph M. Deuel, clerk.

70 United States Circuit Court, Southern District of New York.

E. G. THOMPSON, Trustee, *et al.*
vs.
THE McNAB AND HARLAN M'F'G Co. *et al.* } Equity.

It is hereby stipulated and agreed in consideration of a like waiver on the part of the appellants herein, in the case of these complainants against E. G. Boisselin *et al.*, pending in the United States circuit court, eastern district of Missouri, about to be appealed to the U. S. Supreme Court, that all bond to the appellees herein on appeal at this case to said Supreme Court of the United States is waived, and that such appeal shall work a *supersedeas* without bond.

WETMORE, JENNER & THOMPSON,
Sol'rs for Appellees', Complainants.

New York, Jan'y 20th, 1882.

71 (Endorsed:) U. S. circ't c't., so. dist. N. Y. E. G. Thompson *et al. vs.* The McNab & Harlan M'f'g Co. *et al.* Waiver of bond on appeal. Equity. Sam'l S. Boyd, St. Louis, d'f'ts' sol'r. U. S. circuit court. Filed Jan. 21, 1882. Joseph M. Deuel, clerk.

72 United States Circuit Court, Southern District of New York.

E. G. THOMPSON, Trustee, *et al.*
vs.
THE McNAB AND HARLAN M'F'G Co. *et al.* } Equity.

It is hereby stipulated and agreed by and between counsel for the respective parties herein that the record in the case of these complainants against E. E. Boisselin & *al.*, pending in the U. S. circuit court, eastern district of Missouri, and numbered 965, on appeal to the U. S. Supreme Court, shall, so far as the same shall apply to this case, stand, remain, and be the record of the complainants and defendants herein before the said Supreme Court on appeal, with the same force and effect as though the same had been separately made up as the record on appeal herein.

73 WETMORE, JENNER & THOMPSON,
Sol'rs for Compl't.

SAM'L S. BOYD,
Sol'r and of Counsel for Def'ts herein.

(Endorsed:) U. S. circ't c't, so. dis't N. Y. E. G. Thompson *et al. vs.* The McNab and Harlan M'f'g Co. *et al.* Equity. Stipulation as to record on appeal. U. S. circuit court. Filed Jan. 21, 1882. Joseph M. Deuel, clerk.

74 U. S. Circuit Court, Southern District of New York.

EDWARD G. THOMPSON, Trustee, *et al.*
vs.
THE MCNAB AND HARLAN MANUFACTURING COMPANY *et al.*

We hereby consent that the foregoing papers shall constitute the record to be sent by the clerk of the circuit court of the United States for the southern district of New York to the United States Supreme Court, on the appeal to said court in the above-entitled cause.

New York, Feb'y 11th, 1882.

WETMORE, JENNER & THOMPSON,
Sol'rs for Compl'ts.
SAMUEL S. BOYD, *Def't Sol'r.*

Endorsed: U. S. circuit court. Filed Feb'y 28th, 1882. Joseph M. Deuel, clerk.

75 By the Honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, to Edward G. Thompson, trustee, Clara E. Carr and George D. Scott, as executrix and executor, and Sarah Bartholomew:

Whereas The McNab & Harlan M'f'g Co. and John Harlan have lately appealed to the United States Supreme Court from a decree lately rendered in the United States circuit court for the southern district of New York, made in favor of you, the said Edward G. Thompson, Clara E. Carr and George D. Scott, as executrix and executor, and Sarah Bartolomew, and all bond on appeal has been waived by the appellees, you are hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the 2nd Monday of October next, to do and receive what may appertain to justice to be done in the premises.

76 Given under my hand at the city of New York, in the southern district of New York, in the 2nd circuit, the 21st day of January, in the year of our Lord 1882.

(Signed) SAM'L BLATCHFORD.

(Endorsed:) U. S. circ't c't, so. dist. of N. Y. E. G. Thompson, trustee, *et al. vs.* The McNab and Harlan M'f'g Co. *et al.* Equity. Citation. Service of copy citation admitted. Jan'y 24, 1882. Wetmore, Jenner & Thompson, for appellants.

77 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, Joseph M. Deuel, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to seventy-six, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Edward G. Thompson, trustee, Clara E. Carr and George D. Scott, as executrix

and executor, and Sarah Bartholomew, appellees, against The McNab and Harlan Manufacturing Company and John Harlan, appellants, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this third day of March, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the said United States the one hundred and sixth.

[SEAL.] JOSEPH M. DEUEL, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 196. The McNab and Harlan Manufacturing Company and John Harlan, appellants, *vs.* Edward G. Thompson, trustee for Clara E. Carr, executrix, and George D. Scott, executor of William S. Carr, deceased, and Sarah Bartholomew. Filed 18th April, 1882.

74 U. S. Circuit Court, Southern District of New York.

EDWARD G. THOMPSON, Trustee, *et al.*

vs.

THE MCNAB AND HARLAN MANUFACTURING COMPANY *et al.*

We hereby consent that the foregoing papers shall constitute the record to be sent by the clerk of the circuit court of the United States for the southern district of New York to the United States Supreme Court, on the appeal to said court in the above-entitled cause.

New York, Feb'y 11th, 1882.

WETMORE, JENNER & THOMPSON,
Sol'rs for Compl'ts.

SAMUEL S. BOYD, *Def't Sol'r.*

Endorsed: U. S. circuit court. Filed Feb'y 28th, 1882. Joseph M. Deuel, clerk.

75 By the Honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, to Edward G. Thompson, trustee, Clara E. Carr and George D. Scott, as executrix and executor, and Sarah Bartholomew:

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